



Statement by Tlaleng Mofokeng

**Special Rapporteur on the right of everyone to the enjoyment of the
highest attainable standard of physical and mental health**

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Ms. President,
Distinguished Delegates,

It is a great honour for me to present **my third thematic report to the Human Rights Council which focuses on Digital innovation, technology and the right to health.**

The 75th anniversary of the Universal Declaration of Human Rights will be observed on 10 December this year. It is important to underscore the **universality of human rights**, their prevention, solution-orientated and foundational nature to advance peace, security, humanitarian, and development agenda.

The Secretary-General has recognized that digital technologies can advance universal health coverage and thus play an important role in the realization of the right to health for everyone. In that regard, I made a submission to the Zero draft of the Political Declaration of the High-level Meeting on universal health coverage to be held later this year, lead by the President of the General Assembly.

In April this year, I undertook an official visit to Luxembourg which was my first visit as mandate holder. I am very grateful for the great level of collaboration with the Government, and I look forward to presenting the report on the visit to the Council in June 2024. I am also grateful to the Government of Costa Rica for accepting a visit by my mandate and look forward to visiting the country from 18 to 31 July 2023. The report on this visit will also be presented in June next year.

I have sent additional requests to visit **Chile, Liberia and Tanzania**, among others, to gather information *in situ*. I hope that these visits can materialize. I would like to also continue expressing my availability to Member States for official visits, and to providing technical cooperation and assistance on issues related to my mandate.

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Distinguished delegates,

The report before you is based on an analysis of the contributions received from different stakeholders and experts as well as on relevant literature on digital innovation, technologies and the right to health. I thank everyone for information they have provided..

The growth of digital innovation has been rapidly redefining and reshaping the right to health and, it has strengthened the ability of some Governments to respect, protect and fulfil this human right by ensuring that all **health facilities, goods and services are available, accessible, acceptable and of quality.**

Digital transformation tools, if they are developed, used and regulated without consideration for their human rights impact, they can enable violations and may undermine economic, social, cultural, civil and political rights, including the right to health. And this report brings **insights and recommendations** on these matters.

Distinguished delegates,

In terms of **availability** of health facilities goods and services supported by digital innovation and technologies, digital technologies have been used extensively to manage the health needs presented by the COVID-19 pandemic.

Telemedicine, telehealth and other digital forms of health care solutions offer great potential for scaling up in terms of **physical accessibility** and can improve the accessibility to mobile diagnostics, healthcare workers for screening and advice, and delivery of therapeutics for example. Regarding **economic accessibility**, types of remote health care can be less expensive than in-person health care and can lower the direct and indirect costs of clinic visits, travel or unpaid sick leave.

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The adoption of technologies **should not lead to divestment** in underlying determinants of health, medical facilities and services, particularly those serving those in vulnerable situations such as those in rural areas, migrant populations, LGBTIAQ+ and gender diverse persons, Indigenous Peoples, and older persons amongst others.

Digital tools can perpetuate racism, sexism, ableism or discrimination based on sexual orientation or gender identity, among others in **code, design and application**. I support the call for “**design justice**”, in which technology is designed through diverse and inclusive processes to meet diverse local needs.

The **global digital divide** mirrors broader socioeconomic inequalities impacting availability: affordability gaps between and within countries, between genders, lack of access to hardware between age groups, across social groups and different levels of digital literacy.

The right to health includes a right to access sexual and reproductive health-related **education and information**. On this, I wish to inform you that in March, together with three other mandates, issued a Compendium on Comprehensive Sexuality Education that is available online.¹

Accessibility of information through digital tools should not impair the right to have personal health data treated with confidentiality. It was brought to my attention that on some occasions the sharing of sensitive data can be problematic and potentially dangerous in specific contexts where for example migrants, adolescents and certain sexual orientations or practices of health-care procedures are criminalized, or health status could lead to stigmatization.

Improved data capturing through digital tools can facilitate improved trend analysis, emerging health issues, resource allocation, coordination and accountability for progressive realization of the right to health. At the same

¹ Available at: <https://www.ohchr.org/en/documents/tools-and-resources/compendium-comprehensive-sexuality-education>

time, the rise of digital health innovation and technologies poses unprecedented risks to the right to be free from arbitrary or unlawful interference with one's **privacy**.

In certain circumstances, companies and public sector bodies can be compelled by law enforcement bodies or courts to hand over personal data for criminal investigation purposes. This intensifies concerns as to how genomic data can be used for capitalistic gains and profiteering as well.

Both State and non-State actors in the context of criminalized health services, such as contraception and abortion, where people who seek abortion and individuals who help them face risk of arrest or prosecution, **mobile communication, geo-mapping and search history data** can be used as evidence against people accused of having, providing or assisting in an abortion. This is not good practice under the right to health framework.

In terms of **quality**, digital tools have allowed for the analysis of large data sets for prediction, forecasting and therapeutics development. In addition, human contact remains important for primary care and concerns remain that the **digital delivery of mental health services** specifically, may be an inferior form of health care in comparison to in-person treatment.

I would like to also share some **good practices** that were brought to my attention.

There are a number of global and national efforts are now under way to strengthen the governance of digital health. United Nations Member States are expected to agree to a **digital compact** at the Summit of the Future in 2024, which aims to unite stakeholders in outlining shared principles for an open, free and secure digital future for all.

Regional bodies are increasingly active in promoting the safeguarding of human rights in relation to digital technologies, health and development.

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Where regulatory frameworks for digital technologies are in place, good practices and enforcement must be adequately resourced.

In addition, to counter the growing complexity and opacity of the global data environment, including its vast information asymmetries, some countries have appointed **independent health data privacy oversight bodies**.

A **human rights-based approach** must also ensure the meaningful participation of civil society and communities in sub-national, national and global governance of digital health. There must be **investment in improving literacy regarding the entire digital pipeline**, and that **public education** must be undertaken to ensure rights-holders **are informed about their rights**.

It is important to adopt **a policy approach** to the right to health as it allows for transparency, accountability and recourse.

Digital innovation and technologies are an asset to the operationalisation of the right to health and they present **multi-faceted experiences**, not all good and not all bad.

I am looking forward to continuing cooperating with you in these important aspects, to ensure that billions of people throughout the world realize the full enjoyment of the right to the highest attainable standard of physical and mental health.

Thank you.

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